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IN THE UNITED STATES BANKRUPTCY COURT

JUL - 6 2006

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (7)

IN RE:

) C/A No. 06-00241

) Dan Younger Scates

) Chapter 7

) Cynthia Lee Scates,

) **ORDER**

) Debtors

ENTERED

JUL - 6 2006

S. R. P.

This matter came before the Court for hearing on June 22, 2006, pursuant to the Motion for Court Approval of Reaffirmation Agreement of the Debtors seeking to reaffirm the indebtedness secured by a vehicle. After due consideration, the Court finds as follows.

FINDINGS OF FACT

1. The Debtors filed for Chapter 7 bankruptcy protection on January 24, 2006. The First Meeting of Creditors was held on March 8, 2006.
2. The Debtors' Statement of Intention lists three vehicles.
3. For each debt secured by a security interest in a vehicle, the Statement of Intention provides, "Debtor will retain collateral and continue to make regular payments."
4. DaimlerChrysler Financial Services Americas, LLC, ("DaimlerChrysler") holds a purchase money security interest in the 2002 Dodge Ram 1500.
5. The Debtors did not reaffirm the debt to DaimlerChrysler within 45 days after the first meeting of creditors and have not redeemed the collateral.
6. Pursuant to the request of DaimlerChrysler, the Court entered an order on May 17, 2006, confirming that pursuant to 11 U.S.C. § 521(a)(2)(A) the automatic stay has been terminated as to the vehicle in question. The order therefore provided that the stay was confirmed as terminated, that the vehicle is no longer property of the estate and that

DaimlerChrysler is authorized to proceed with any action as to such property as is permitted by applicable non-bankruptcy law and 11 U.S.C. § 521(a) or (d).

7. Regardless of the Statement of Intention and the order confirming that the automatic stay has been terminated, the Debtors now seek to reaffirm a debt to DaimlerChrysler in the amount of \$14,492.25. A proposed Reaffirmation Agreement signed by the Debtors and Creditor DaimlerChrysler was filed with the Court on May 19, 2006.

8. The Debtors are represented by counsel in this bankruptcy case, but the Debtors' attorney has refused to sign the attorney certification necessary for the enforceability of the reaffirmation agreement due to the lack of sufficient income to make the payments on the reaffirmed debt. Accordingly, a Motion for Court Approval of Reaffirmation Agreement was filed with the Court as required by Local Rule 4008-1.

9. Along with the proposed Reaffirmation Agreement and Motion for Court Approval, the Debtors filed a statement of their income and expenses clearly indicating that they do not have sufficient income to pay this debt. They affirmed this fact at the hearing. The statement indicates that the Debtors have expenses of \$1231 more than their income before considering this obligation.

10. The Debtors explained that their son will make the payment on the debt. The Debtors' schedules do not indicate that the son lives in their household.

DISCUSSION AND CONCLUSIONS OF LAW

11 U.S.C. § 521(a)(2)(A) provides that for each secured debt:

within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property....

The statute further provides in § 521(a)(6) that a debtor shall:

in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

- (A) enters into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property; or
- (B) redeems such property from the security interest pursuant to section 722.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee

Since the time provided for entering into a reaffirmation agreement expired before the Debtors signed the proffered agreement, the debt cannot now be reaffirmed. Further, per the statute and as a consequence the creditor can exercise whatever rights it has under applicable nonbankruptcy law as the stay is terminated and the personal property is no longer property of the estate. And finally, Congress provided that the debtor “may not

retain” the property unless the purchase money debt secured by personal property is redeemed or reaffirmed within the time period provided.

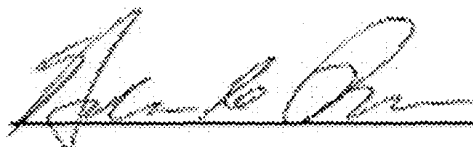
Even if the timing of the reaffirmation agreement was not a factor, this debt should not be reaffirmed. 11 U.S.C. § 524(c) provides in part that a reaffirmation agreement is enforceable only if, among other things, it is accompanied by a declaration or an affidavit of the attorney that represented the debtor which states that the agreement does not impose an undue hardship on the debtor. 11 U.S.C. § 524(c)(3)(B). In this case, no such declaration was filed. Instead the attorney appeared at the hearing and explained that the Debtors did not have sufficient income and therefore he did not sign the declaration. The attorney represented to the Court, however, that the Debtors state that they will not make the payment. Instead, their son will do so. He did not, however, offer to sign the agreement given this understanding. Absent such a declaration, the Court can only approve the agreement if it finds that (1) the agreement does not impose an undue hardship on the Debtors and (2) the agreement is in the best interest of the Debtors. 11 U.S.C. § 524(c)(6)(A)(i) & (ii).

In this case, the Debtors did not offer any evidence or explanation as to how they personally will benefit from the reaffirmation agreement. The only information given was that if the reaffirmation agreement was not executed, the car may be repossessed by the creditor. It was unclear as to whether the car would be used primarily by the Debtors or by their son. There was no testimony or representation that the car was necessary to the Debtors’ personal household and there was no consideration given by the Debtors to the consequences of reaffirming the debt should the son be unable to make the payments in question. The son did not testify at the hearing as to his willingness or ability to make the

payments. Absent any evidence of the Debtors' need for the vehicle and of the certainty that they will not be required to pay for the vehicle, the Court cannot find that the reaffirmation of this debt is in the best interest of the Debtors or that it will not pose an undue hardship on the Debtors.

For the reasons set forth above, the reaffirmation will not be approved.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Hon. L. R. ...", is written over a horizontal line.

UNITED STATES BANKRUPTCY JUDGE

Spartanburg, South Carolina
July 6, 2006